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Barsyl Supermarkets Inc. d/b/a Fine Fare Supermarkets and Local 338, Retail, Wholesale & Department Store Union, UFCW. Case 29–CA–088768

February 13, 2013

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint and notice of hearing. Upon a charge filed on September 6, 2012, by Local 338, Retail, Wholesale & Department Store Union, UFCW (the Union), the Acting General Counsel issued the complaint on November 29, 2012, against Barsyl Supermarkets Inc. d/b/a Fine Fare Supermarkets (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On January 2, 2013, the Acting General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On January 4, 2013, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on the Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by December 13, 2012, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region notified the Respondent, by letter dated December 18, 2012, that if no answer was received by December 26, 2012, a motion for default judgment would be filed. The Respondent failed to file an answer.

Accordingly, in the absence of good cause being shown for the failure to file an answer, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business located at 406 Avenue P, Brooklyn, New York 11223 (the Respondent's facility), and has been operating a retail grocery store.

During the 12-month period preceding the issuance of the complaint, which is representative of its annual operations in general, the Respondent, in the course and conduct of its business operations described above, derived gross revenues in excess of \$500,000, and purchased and received goods and supplies valued in excess of \$5000 directly from suppliers located outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All of Barsyl's present and future full-time and part-time employees (other than store managers, butchers and meat wrappers) employed in all departments in all of the present and future supermarkets and stores operated by Barsyl.

At all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from November 6, 2011 through December 31, 2014.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about August 16, 2012, the Union has requested in writing that the Respondent furnish the Union with the following information: (1) addresses and phone numbers of all unit employees, and (2) their work schedules and payroll data from November 6, 2011, to the present.

The information requested by the Union, as described above, is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about August 16, 2012, the Respondent has not responded to the Union's request for information described above.

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

CONCLUSION OF LAW

By failing and refusing to furnish the Union with the requested information, the Respondent has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with certain information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information it requested on August 16, 2012.

ORDER

The National Labor Relations Board orders that the Respondent, Barsyl Supermarkets Inc. d/b/a Fine Fare Supermarkets, Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 338, Retail, Wholesale & Department Store Union, UFCW as the exclusive collective-bargaining representative of the unit employees by failing and refusing to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the following bargaining unit:

All of Barsyl's present and future full-time and part-time employees (other than store managers, butchers and meat wrappers) employed in all departments in all of the present and future supermarkets and stores operated by Barsyl.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union the information it requested on August 16, 2012.

(b) Within 14 days after service by the Region, post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 16, 2012.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 13, 2013

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

FINE FARE SUPERMARKETS

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 338, Retail, Wholesale & Department Store Union, UFCW as the exclusive collective-bargaining representative of our unit employees by failing and refusing to furnish the Union with requested information that is necessary for and relevant to the per-

formance of its duties as the exclusive collective-bargaining representative of the following employees in the collective-bargaining unit:

All of our present and future full-time and part-time employees (other than store managers, butchers and meat wrappers) employed in all departments in all of the present and future supermarkets and stores operated by us.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish the Union with the information it requested on August 16, 2012.

BARSYL SUPERMARKETS INC. D/B/A FINE FARE
SUPERMARKETS